
FINAL RECOMMENDATIONS FOR THE CONTRACTORS STATE LICENSE BOARD

Pursuant to SB 2029 (Figueroa) of 2000, Thomas Papageorge was appointed by the Department of Consumer Affairs (DCA) as the Contractors' State License Board Enforcement Program Monitor (Monitor) and is charged with monitoring and evaluating the Contractors' State License Board's (CSLB or Board) discipline system and procedures, making his highest priority the reform and reengineering of the Board's enforcement program and operations, and the improvement of the overall efficiency of the Board's disciplinary system. This monitoring duty also includes improving the quality and consistency of complaint processing and investigation and reducing the timeframes for each, reducing any complaint backlog, assuring consistency in the application of sanctions or discipline imposed on licensees, and includes the following areas: the accurate and consistent implementation of the laws and rules affecting discipline, staff concerns regarding disciplinary matters or procedures, appropriate utilization of licensed professionals to investigate complaints, and the Board's cooperation with other governmental entities charged with enforcing related laws and regulations regarding contractors.

The law requires the Monitor to submit written reports on his findings and recommendations. To date, the Monitor has submitted two reports. The findings and recommendations within these reports relate to CSLB's management structure and information system, inadequate resources, licensing system, complaint handling, investigations, prosecutions, public disclosure and outreach, and consumer remedies. The recommendations that follow result from the Monitor project.

Recommendations of the Joint Sunset Review Committee

ISSUE #1. (CONTINUE THE CONTRACTORS' STATE LICENSE BOARD?) Should the profession be regulated by an independent board rather than by a bureau under the Department?

Recommendation #1: *Recommend the continuation of the Contractors' State License Board for four years.*

Comments: The CSLB was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) two years ago (1999-2000). The JLSRC and the DCA identified a number of issues and problem areas concerning this Board. There was general dissatisfaction with the lack of efforts by CSLB to address major issues as identified during its previous review, and concern about whether this Board will adequately protect consumers in the future.

Because of these concerns, the JLSRC recommended continuing the Contractors' State License Board for only two years. In addition to extending the existence of the CSLB, SB 2029 (Figueroa), Chapter 1005, Statutes of 2000, added two additional public members to the composition of the CSLB, required all home improvement contracts and estimates for home improvement work to include whether or not a contractor carries general liability insurance, and required CSLB to adopt a checklist of items that a homeowner contracting for home improvement should consider. Additionally, SB 2029 required the appointment of a CSLB Enforcement Program Monitor and the CSLB was required to perform several comprehensive studies and reviews and report to DCA and the Legislature.

As a result of the Joint Committee's recommendations, the Contractors' State License Board has made significant changes to the way it does business. The CSLB should be commended for the great strides it has made since its last review.

ISSUE #2. (AMEND THE CONTRACTORS' STATE LICENSE BOARD MANDATE?)
Should the CSLB statutory mandate be amended to reflect that consumer protection is paramount?

Recommendation #2: Amend Business and Professions Code Section 7000 to state clearly that consumer protection is the first priority of CSLB.

Comments: Consumer protection is the essential purpose of all California's occupational licensure boards and bureaus. However, CSLB's statutory scheme does not establish clearly that protecting consumers is the agency's primary mission. The absence of a clear statutory mandate can lead to inconsistencies in agency policy over time and may also contribute to inaccurate judicial interpretations of CSLB's statutes.

The Medical Board (Business and Professions Code section 2229(a) and (c)) has a similar mandate.

ISSUE #3. (REQUIRE CONSISTENT ANNUAL STATISTICAL REPORTING BY THE CSLB ENFORCEMENT PROGRAM?)
Should a new statutory mandate for consistent annual reporting by CSLB be implemented?

Recommendation #3: Require the annual reporting of various performance indicators reflecting CSLB's complaint handling, arbitration and mediation, investigations, and prosecutions of all kinds.

Comments: The Enforcement Monitor reports that the greatest single difficulty for the project and the Legislature in evaluating CSLB's enforcement program is the absence of a consistent set of annual performance statistics. Much data is accumulated by CSLB, and much has been reported in the sunset review process and elsewhere, but reliable and consistent statistics on even basic work outputs (such as license revocations or accusations filed) are often unavailable, or unavailable without extraordinary effort. Substantial variations in the definitions and categories

used for the enforcement program data accumulated over the years make meaningful comparisons over time very difficult.

Once a baseline of performance data is established, and consistent annual reports are generated using the same reporting parameters, the Legislature and the Department will have the ability to perform meaningful evaluations of CSLB's enforcement program.

ISSUE #4. (INCREASE LICENSING FEES?) Should the Board's licensing scheme be modified to protect the public through the enhancement of the enforcement program?

Recommendation #4: The Joint Committee recommends an increase in licensing fees.

Comments: An outdated license fee structure means CSLB resources are inadequate to meet the Legislature's and public's demand for service improvement. CSLB is funded almost exclusively by contractor license fees, and those fees were last adjusted effective January 1, 1994. Service and work requirements associated with regulating each licensee have remained relatively constant since 1994, while the number of licensees and citizens using construction services has increased significantly. Under these circumstances, CSLB has experienced a substantial reduction in *inflation-adjusted* per licensee funding, roughly equal to the 21.2% increase in the California Consumer Price Index in the past eight years. If \$300 was an appropriate license renewal fee in 1994, it is roughly 21% less appropriate today.

Even without this apparent reduction in inflation-adjusted resources, the California Legislature and public now demand from CSLB increased levels of service speed and service quality. The Legislature has established a statutory goal of six months for the full investigation and handling of most CSLB complaints, and one year for the most complex fraud matters. CSLB has never consistently met such a stringent service standard at its current resource level, and the agency cannot do so today.

Unless a fee increase is enacted in 2002 (to become effective on January 1, 2003), CSLB's 2002-03 reserve fund will dip to 2.9 months of operating expenses, and its 2003-04 reserve fund level will decline to only 1.5 months of operating expenses.

The Monitor has proposed an approximate 20% increase in CSLB license fees to restore CSLB budget and enforcement resources to 1994 per capita levels and to ensure a sufficient reserve fund.

ISSUE #5. (MODIFY THE THREE-MONTH FUND RESERVE LIMIT?) Should the current requirement that the Board maintain a reserve balance equal to only three months of estimated annual authorized expenditure be increased to at least six months?

Recommendation #5: The Joint Committee recommend authorizing the Board to maintain up to a six-month reserve to ensure an adequate reserve fund.

Comments: The CSLB believes it needs some flexibility in its reserve fund total. The Board is currently required to maintain a reserve fund of no more than three months' worth of operating expenses; a higher reserve fund theoretically triggers a required fee reduction or rebate. The CSLB seeks to raise its reserve fund level to approximately six months' worth of operating expenses. This would provide stability in fee levels and prevent the Board from repeatedly having to adjust its fees through the time-consuming rulemaking process due to circumstances beyond its control. For example, the state recently borrowed \$5 million from CSLB's reserve fund to assist it in addressing the general fund deficit. If that \$5 million is repaid in one lump sum, it is likely to bump the reserve fund over the existing three-month level, thus requiring a refund or fee reduction. CSLB's proposal to increase the three-month threshold to six months is identical to a provision in SB 133 (Figueroa) (Chapter 718, Statutes of 2001) which adjusted the Board of Accountancy's reserve fund from three to six months.

ISSUE #6. (ALLOW FINGERPRINTING, CRIMINAL BACKGROUND CHECKS, AND EXPERIENCE VERIFICATION?) Should the Board be authorized to require fingerprinting and verify experience prior to issuing new licenses?

Recommendation #6: The Joint Committee recommends the CSLB should require fingerprinting and criminal history and experience verification prior to issuing new licenses.

Comments on Criminal History Verification: For many years, CSLB has been authorized to deny and to discipline a licensee for conviction of a crime that is substantially related to the qualifications, functions, or duties of a contractor. For just as many years, CSLB's application form has requested information on prior criminal convictions. When applicants report prior convictions, a substantial body of existing law guides CSLB in determining the appropriate course of action. Section 868, Title 16 of the California Code of Regulations (CCR), sets forth an illustrative list of crimes the conviction of which is deemed to be "substantially related" to the qualifications, functions, and duties of a contractor. Even if a contractor has committed one of the crimes enumerated in section 868, section 869 defines numerous criteria which — if satisfied — may demonstrate that a person with a criminal conviction has rehabilitated him/herself and is presently eligible for a license. And section 870 sets forth the earliest date(s) at which a contractor whose license has been revoked (including revocation for a substantially related criminal conviction) may reapply for licensure.

Over the past many years in which this regulatory scheme has existed to guide CSLB discretion regarding the use of criminal conviction information, many applicants have truthfully reported prior convictions on their application forms. CSLB staff report that very few applications have been denied due to the convictions reported.

Unfortunately, other applicants have lied about their prior criminal history, and CSLB currently has no way of detecting these lies because it lacks the authority to require fingerprints of its license applicants. Some of these applicants have gone on to become licensees who have perpetrated massive frauds against the public. In his Initial Report, the Monitor discussed the Crown Builders matter in San Diego — the latest in what prosecutors say is a long line of cases in which a CSLB licensure applicant lied on his application about his criminal history, was given

a contractor's license by an unsuspecting CSLB, defrauded numerous families of substantial amounts of money, and disappeared.

As a consumer protection agency charged with protecting the public, CSLB must be able to verify the identity of an applicant to whom it is giving a state occupational license, and the accuracy of criminal history information asserted on its application form. Fully 23 other DCA regulatory agencies (and many other non-DCA occupational licensing agencies) already use fingerprinting in connection with their licensing and/or enforcement activities.

A fingerprinting requirement will not change the substantial body of existing law governing CSLB's use of criminal convictions in licensing and enforcement decisionmaking, and it will not affect the vast majority of legitimate applicants who truthfully complete their applications. *It will simply and finally enable CSLB to detect the liars.* And it may deter individuals who would pose a substantial threat to the public from applying for a license. Such a requirement will protect the public without unduly burdening licensure applicants. New "LiveScan" technology permits applicants to be electronically fingerprinted in many locations in every county in California at a cost of only \$56–\$68, and with turnaround notification to CSLB within approximately 72 hours.

Comments on Experience Verification: Under Business and Professions Code section 7068 and section 825, Title 16 of the California Code of Regulations (CCR), a first-time applicant for a contractor's license must demonstrate completion of at least four full years of experience as a journeyman, foreman, supervising employee, contractor, or owner-builder. Although CSLB has no education requirement, completion of certain types of education can substitute for experience in certain circumstances. However, CSLB historically checks only 3–6% of licensure applications to investigate any representation made therein. Further, it lacks an adequate system for verifying the experience claimed. This system is obviously inadequate to ensure that applicants meet statutory requirements for licensure.

The Monitor suggests that CSLB improve its system of experience investigation and verification for license applications. At its January 24, 2002 meeting, the Board approved a proposal to sponsor legislation that will assist its experience verification process. The proposal would amend Unemployment Insurance Code section 1095 to allow CSLB to access the records of the Employment Development Department (EDD) to verify the experience claimed for licensure. Existing section 1095 includes a long list of governmental agencies that may already access EDD's records, including various local, county, state welfare programs, child support enforcement agencies, pension administrators, agencies seeking those who have defaulted on student loans, public employee retirement entities, and law enforcement agencies. A proposed change to section 1095 would add CSLB to the list of agencies authorized to access EDD employment information, enabling it to more efficiently and effectively investigate and verify experience claimed on licensure applications.